IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

WEDNESDAY, THE TWENTY FOURTH DAY OF NOVEMBER
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE MR JUSTICE B. SUDERSHAN REDDY

and
THE HON'BLE MR JUSTICE T.CH.SURYA RAO

WRIT PETITION NO : 21418 of 2004

Between:

M/s. Blossoms Oils & Fats Limited

Rep. by its Commercial Manager C. Bhaskar Reddy
P.S.No. F/4/3/3&4, F/4/8/2, Industrial Area, Adavipolam,
Yanam.

..... PETITIONER

AND

1 The Commercial Tax Officer Kakinada
Kakinada Circle, Kakinada,
East Godavari District.
2 The Assistant Commercial Tax Officer (INT)

O/o The Assistant Commissioner of Commercial Taxes (INT)
C/o. The Deputy Commissioner of Commercial Taxes, Kakinada, East Godavari District.
3 M/s. Kedia Overseas Limited
Plot No. 15, Survey No. 238/1B, IDA, APIIC, Vakalapudi,
Kakinada, East Godavari District.

...RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue an appropriate writ, order or direction particularly in the nature of Writ of Mandamus declaring that the requirement of obtaining delivery note in Form-XXXIX in terms of Sub Rule (10(of Rule -45 and Submission of thereof by importer of other

States in terms of Sub-rule (11) of Rule 45 of the APGST Rules from the commercial tax officer having jurisdiction over the customs sea port in respect of registered dealers in other State Sales Tax laws and the Central Sales Tax Act, 1956 as illegal, arbitrary, unlawful, improper and ultra vires the provisions of APGST Act, 1957 in general and Section-38 of the Act in particular as also in the teeth of the judgments of the Honourable Supreme Court in 118 STC 297 and 306 so long as the imported purchased goods transported covered by proper and necessary documents such as bill of entry, bill of lading, proof of customs duty payment and other accompanying documents and also the self waybill issued under the signature of the authorities of the Commercial tax department of the particular State Government and consequently declare the letter of commercial tax officer, Kakinada dated 03.11.2004 addressed to the third respondent detaining the goods belonging to the petitioner purchased during the course of import on high sea waters as illegal and arbitrary and opposed to the provisions of the Act and grant such other relief or reliefs as are deemed fit and proper in the circumstances.

Counsel for the Petitioner: MR.M.V.J.K.KUMAR

Counsel for the Respondent No.1&2: Mr.K.Raji Reddy, Special Government Pleader for Taxes

Counsel for Respondent No.3: --

The Court made the following :

Oral Order: (per Sri BRSR.J)

We are in complete agreement with the submission made by the learned standing counsel for the department that the writ petition is premature at this stage. We are not inclined to undertake the scrutiny of the constitutional validity of the impugned sub-Rule (10) of Rule 45 of the APGST Rules.

The learned counsel for the petitioner Sri MVJK.Kumar brings to our notice that pursuant to the notice issued by the Commercial Tax Officer, Kakinada requiring the petitioner to produce books of accounts for the years 2001-02, 2002-03, 2003-04 and 2004-05 along with connected records before him, he has produced the same.

The gravamen of the complaint is that in spite of the request made by the petitioner to issue Form 39, the respondents have not considered the request of the petitioner and in fact there is no response from them. It is under those circumstances, the petitioner had chosen to invoke the extraordinary jurisdiction of this Court under Article 226 of the Constitution of India challenging the vires of the impugned sub-Rule (10) of Rule 45 of the Rules.

Having regard to the facts and circumstances, we consider it appropriate to direct the respondents herein to consider the representation made by the petitioner for issuing Form 39 and take an appropriate decision thereon in accordance with law. It is needless to observe that it shall be open to the respondents to peruse the books of accounts with connected records already made available by the petitioner. That an appropriate decision in this regard shall be taken within a period of one week from the date of receipt of this order and communicate the same to the petitioner.

The writ petition is accordingly disposed of. No costs.

(B.SUDERSHAN REDDY,J)

dated 24..11.2004

(T.CH.SURYA RAO,J)

msv.

Note: Furnish CC by tomorrow

(B/o)

To

1 The Commercial Tax Officer Kakinada
Kakinada Circle, Kakinada,
East Godavari District.
2 The Assistant Commercial Tax Officer (INT)

O/o The Assistant Commissioner of Commercial Taxes (INT)
C/o. The Deputy Commissioner of Commercial Taxes, Kakinada, East Godavari District.
3. 2 CD copies.

4. 2 CCs to the Special Government Pleader for Taxes (OUT)